

ESTTA Tracking number: **ESTTA677195**Filing date: **06/09/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Prop Supply & Service, LLC		
Entity	Corporation	Citizenship	TEXAS
Address	9920 West Sam Houston Parkway South Suite 400 Houston, TX 77099 UNITED STATES		

Attorney information	Xinsheng Wang US-China Intellectual Property Counsel 9920 W. Sam Houston Parkway S. Suite 400 Houston, TX 77479 UNITED STATES xwang@uscipc.com Phone:5162633343
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Applicant Information

Application No	86118239	Publication date	05/12/2015
Opposition Filing Date	06/09/2015	Opposition Period Ends	06/11/2015
Applicant	TBM Sand & Storage Logistics, LLC 4750 Kimberly Farms Dr. Anderson, CA 96007 UNITED STATES		

Goods/Services Affected by Opposition

Class 006. First Use: 2009/01/01 First Use In Commerce: 2009/01/01
All goods and services in the class are opposed, namely: Metal silos for the storage of proppant used in oil well and gas well hydraulic fracturing operations

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3989998	Application Date	12/07/2010
Registration Date	07/05/2011	Foreign Priority Date	NONE
Word Mark	PROPMASER		

Design Mark	<h1>PropMaster</h1>
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2008/11/15 First Use In Commerce: 2008/12/15 Proppant for use in oil well and gas well hydraulic fracturing operations

Attachments	85192745#TMSN.png(bytes) Opposition Pleading 9June2015.pdf(3644854 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Xinsheng Wang/
Name	Xinsheng Wang
Date	06/09/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No.
Mark:
Published in the Official Gazette on
Filed:

86/118,239
PROPMASTER
May 12, 2015
November 13, 2013

PROP SUPPLY & SERVICE, LLC,

Opposer,

v.

TBM SAND & STORAGE LOGISTICS, LLC

Applicant.

Opposition No.:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

BOX TTAB – FEE

NOTICE OF OPPOSITION

Opposer, Prop Supply & Service, LLC d/b/a Rainbow Ceramics (“Opposer”), a limited liability company organized and existing under the laws of Oklahoma and having an office and principal place of business at 9920 West Sam Houston Parkway South, Suite 400, Houston, Texas 77099, believes that it would be damaged by the issuance of a registration for the

trademark PROPMAS^{TER} in International Class 6 for “Metal silos for the storage of proppant used in oil well and gas well hydraulic fracturing operations” as applied for by Applicant TBM Sand & Storage Logistics, LLC (“Applicant”) in Application Serial No. 86/118,239, filed on November 13, 2013 based on use since January 1, 2009, and therefore opposes the same. As grounds for its opposition, Opposer alleges as follows:

1. Opposer is well-known in the field as a provider of proppant for use in oil well and gas well hydraulic fracturing operations, and has been in the business of providing proppant and related services since 2008.

2. On or about November 15, 2008, Opposer began using a mark PROPMAS^{TER} for to identify its proppant for use in oil well and gas well hydraulic fracturing operations.

3. Opposer’s PROPMAS^{TER} brand of proppant are sold through a number of trade channels throughout the U.S.

4. Since its launch of PROPMAS^{TER} proppant in 2008, Opposer has sold a large quantity of proppant to a number of customers and through a number of trade channels.

5. Opposer has advertised products identified by the PROPMAS^{TER} mark to the trade and to the general public in various media, including the internet. Opposer’s advertising features the PROPMAS^{TER} mark. Opposer has spent a large amount of funding in advertising and promoting its PROMAS^{TER} brand and products.

6. To protect its trademark rights for different products, Opposer owns the following marks for its proppant:

- a. Reg. No. 3,989,998 – **PROPMAS^{TER}** for “proppant for use in oil well and gas well hydraulic fracturing operations” in International Class 1, registered on July 5, 2011.

- b. Reg. No. 3,990,059 – **PROPLIGHT** for “proppant for use in oil well and gas well hydraulic fracturing operations” in International Class 1, registered on July 5, 2011.
- c. Reg. No. 3,990,058 – **PROPRAIDER** for “proppant for use in oil well and gas well hydraulic fracturing operations” in International Class 1, registered on July 5, 2011.
- d. Reg. 3,997,289 - **REALITE** for “proppant for use in oil well and gas well hydraulic fracturing operations” in International Class 1, registered on July 19, 2011.

The registration set forth above is valid, subsisting and in full force and effect; the registration serves as *prima facie* evidence of Opposer’s exclusive rights in and to the registered mark; the registration establishes that Opposer’s rights in the mark that include in whole or in part **PROPMASER** was established long prior to any rights on which Applicant can rely and place Applicant on notice of Opposer’s rights.

7. By virtue of its sales and promotion of its **PROPMASER** branded products, Opposer’s **PROPMASER** mark has become well-known in the trade and to the general public when used in connection with proppant, and has acquired a degree of distinctiveness indicating Opposer uniquely as the source of such goods.

8. On information and belief, Applicant is a Wyoming limited liability company doing business at 4750 Kimberly Farms Drive, Anderson, California 96007.

9. According to the records of the United States Patent and Trademark Office, on or about November 13, 2013, Applicant filed Application Serial No. 86/118,239 to register the mark **PROPMASER** for “Metal silos for the storage of proppant used in oil well and gas well

hydraulic fracturing operations” in International Class 6 based on use of the mark since January 1, 2009.

10. The Application filing date is after the filing date for Opposer’s registered PROPMASER mark, and the alleged date of first use is after Opposer’s date of first use.

11. On information and belief, prior to Applicant’s filing of the application for a PROPMASER mark opposed herein, Applicant, who claims to be in the business of providing products and services for hydraulic fracturing operations, was on actual notice of Opposer’s prior rights in and to the PROPMASER mark. As a matter of law, by virtue of Opposer’s registration for its PROPMASER mark, Applicant was presumed to have been on constructive notice of Opposer’s rights prior to its application filing date.

12. Applicant’s PROPMASER mark is identical to Opposer’s PROPMASER mark in appearance, sound and commercial impression.

13. The goods for which Applicant seeks to register the PROPMASER mark and the goods on which Opposer uses the PROPMASER mark are highly related.

14. Based on information provided on Applicant’s website, Applicant provides ceramic proppants logistic services primarily for a company named FultonTec. The products sold by FultonTec’s directly competes with Opposer’s products.

15. Both Opposer’s goods and FultonTec’s goods are imported from China; and both are sold through the same channels of trade.

16. Both Opposer and Applicant use their respective marks on goods marketed to the hydraulic fracturing industry. The consumers for both Opposer’s and Applicant’s goods offered under the PROPMASER mark overlap.

17. Accordingly, registration of Applicant's mark is inconsistent with Opposer's prior rights in its PROPMAS^{TER} mark, is inconsistent with Opposer's statutory grant of exclusivity of use of its registered PROPMAS^{TER} mark and would destroy Opposer's investment and goodwill in its mark.

First Claim for Relief – Likelihood of Confusion under Section 2(d)

18. Opposer repeats and realleges each and every allegation contained in paragraphs 1 through 16 as if fully set forth herein.

19. The PROPMAS^{TER} mark is associated exclusively with Opposer and has been used continuously and registered by Opposer since the date prior to Applicant's application date.

20. By virtue of the use of the PROPMAS^{TER} mark, the goodwill associated with Opposer's mark, the registration owned by Opposer for the PROPMAS^{TER} mark, and the renown and recognition of the PROPMAS^{TER} mark, registration by Applicant of a mark identical in appearance, sound and commercial impression to Opposer's PROPMAS^{TER} mark for related goods to those offered by Opposer under its PROPMAS^{TER} mark targeted to the same consumers and made available through the same channels of trade is likely to cause confusion, cause mistake, or to deceive the public into the belief that the goods offered by Applicant under the mark herein opposed comes from or are otherwise sponsored by, endorsed by, or are in some way associated with Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

21. By reason of the foregoing, Opposer is likely to be harmed by registration of Application Serial No. 86/118,239 for the mark PROPMAS^{TER}.

Second Claim for Relief – Dilution under section 2(f)

22. Opposer repeats and realleges each and every allegation contained in paragraph 1 through 21 as if fully set forth in.

23. The PROPMASER mark is distinctive, have been used nationally in commerce and widely advertised throughout the United States by Opposer for over seven years and is instantly recognized by consumers as a symbol of Opposer and its products.

24. Applicant's PROPMASER mark is identical to Opposer's PROPMASER mark in appearance, sound and commercial impression.

25. Given the renown and recognition of Opposer's PROMASER mark, and variations thereof, Applicant's registration of the PROPMASER mark is likely to dilute, would dilute and is diluting the distinctive source identifying function of Opposer's PROPMASER mark by lessening the capacity of those marks to identify and distinguish goods of Opposer, and thereby harming Opposer in violation of Section 2(f) of the Lanham Act, 15. U.S.C. §1052(f).

26. By reasons of foregoing, Opposer is likely to be harmed by registration of Application Serial No. 86/118,239 for the mark PROPMASER.

WHEREFORE, it is respectfully requested that this Opposition be sustained and that the registration of the mark shown in Application Serial No. 86/118,239 be denied.

Dated: June 9, 2015

US-China Intellectual Property Counsel
9920 W. Sam Houston Parkway S., Suite 400
Houston, Texas 77099
Tel: 516-263-3343 (o)

A handwritten signature in black ink, reading "Wang Xinsheng". The signature is written in a cursive, flowing style.

By: _____

Xinsheng Wang, Esq.

Attorney for Opposer

EXHIBIT A

United States of America

United States Patent and Trademark Office

PropMaster

Reg. No. 3,989,998

Registered July 5, 2011

Int. Cl.: 1

PROP SUPPLY & SERVICE, LLC (OKLAHOMA LIMITED LIABILITY COMPANY), AKA
RAINBOW CERAMICS
SUITE 302
9801 WESTHEIMER
HOUSTON, TX, TX 77042

TRADEMARK

FOR: PROPPANT FOR USE IN OIL WELL AND GAS WELL HYDRAULIC FRACTURING
OPERATIONS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

PRINCIPAL REGISTER

FIRST USE 11-15-2008; IN COMMERCE 12-15-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-192,745, FILED 12-7-2010.

PAUL MORENO, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

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United States of America

United States Patent and Trademark Office

PropRaider

Reg. No. 3,990,058

Registered July 5, 2011

Int. Cl.: 1

PROP SUPPLY & SERVICE, LLC (OKLAHOMA LIMITED LIABILITY COMPANY), AKA
RAINBOW CERAMICS
9801 WESTHEIMER
SUITE 302
HOUSTON, TX 77042

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OPERATIONS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

PRINCIPAL REGISTER

FIRST USE 11-15-2008; IN COMMERCE 12-15-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-193,852, FILED 12-9-2010.

PAUL MORENO, EXAMINING ATTORNEY



David J. Kyfas

Director of the United States Patent and Trademark Office

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United States of America

United States Patent and Trademark Office

PropLight

Reg. No. 3,990,059

Registered July 5, 2011

Int. Cl.: 1

PROP SUPPLY & SERVICE, LLC (OKLAHOMA LIMITED LIABILITY COMPANY), AKA
RAINBOW CERAMICS
SUITE 302
9801 WESTHEIMER
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PRINCIPAL REGISTER

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SER. NO. 85-193,869, FILED 12-9-2010.

PAUL MORENO, EXAMINING ATTORNEY



David S. Kybas

Director of the United States Patent and Trademark Office

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United States of America

United States Patent and Trademark Office

ReaLite

Reg. No. 3,997,289

Registered July 19, 2011

Int. Cl.: 1

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RAINBOW CERAMICS
SUITE 302
9801 WESTHEIMER
HOUSTON, TX 77042

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THE WORDING "REALITE" HAS NO MEANING IN ENGLISH.

SER. NO. 85-193,881, FILED 12-9-2010.

PAUL MORENO, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

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See 15 U.S.C. §1059.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION AND EXHIBITS THERETO was sent by first class mail postage pre-paid to Applicant's correspondence of record as identified in the records of the USPTO, this 9th day of June, 2015.

TBM SAND & STORAGE LOGISTICS, LLC
4750 KIMBERLY FARMS DR
ANDERSON, CALIFORNIA 96007
UNITED STATES



Xinsheng Wang